

REMARKS

Claims 1-16, 18-25, 27-30, 32-37 and 39-62 are now in the case.

Applicants have cancelled claims 17, 26, 31 and 38 without prejudice.

Applicants have amended independent claims 1, 23, 27 and 37 to include the feature of macroscopically three-dimensional cleaning sheet including an additive.

Applicants have amended dependent claims 18, 22, 32, 39 and 56 to correct the dependency of these claims.

Applicants have also amended dependent claims 18, 58 and 59-61 to correct grammatical errors.

Each of these amendments is supported by the specification, claims and drawings as filed.

Rejection under 35 U.S.C. § 102/103

Claims 1-17, 23-27, 35, 36, 44-48 and 50-54 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Shizuno '397 or in the alternative under 35 U.S.C. § 103(a) as being obvious over '397.

Applicants respectfully overcome the rejection in view of the following remarks.

At the outset, Applicants respectfully remind the Examiner that independent claims 1, 23, 27 and 37 include the features of a macroscopically three-dimensional cleaning sheet having a first outward surface and a second outward surface, wherein at least one of the outward surfaces has a macroscopic three dimensional texture, said macroscopic dimensional texture being defined by peaks and valleys and which further includes the features of specific Average Peak to Peak Distances and/or Surface Topography Indexes and/or Average Height Differentials and comprising an additive.

Applicants note that Shizuno et al. do not teach or suggest a cleaning sheet having the specific Average Peak to Peak Distances and/or Surface Topography Indexes and/or Average Height Differentials presently claimed.

Consequently, it is Applicants' position that the Shizuno reference does not anticipate claims 1-17, 23-27, 35, 36, 44-48 and 50-54.

In addition, the office action dated 1/28/03 stated that "it should be noted that the Examiner is equating Figures 1 and 2 of Shizuno et al. to the peaks and valleys of the present invention. As a result, Shizuno et al. do disclose a macroscopically three-dimensional textured cleaning sheet."

The office action also stated that "[a]pplicants argues that Shizuno et al. fail to teach a macroscopically three-dimensional cleaning sheet. This argument is not persuasive because as discussed above, Figures 1 and 2 of Shizuno et al. show peaks and valleys."

Applicants note that it is well settled patent law that "patent drawings do not define the precise proportions of the elements and **may not be relied on to show particular sizes** if the specification is completely silent on the issue." (Emphasis supplied) *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956 (C.A.F.C. 2000) and "[o]rdinarily, drawings which accompany an application for a patent **are merely illustrative of the principles** embodied in the alleged invention claimed therein and **do not define the precise proportions of elements** relied upon to endow the claims with patentability. **Patent Office drawings are not normally drawn to scale.**" (Emphasis supplied) *In re Olson*, 212 F.2d 590 (C.C.P.A. 1954)

In addition, "[a]bsent any written description in the specification of quantitative values, **arguments based on measurements of a drawing are of little value.**" (Emphasis supplied) *In re Wright*, 569 F.2d 1124 (C.C.P.A. 1977)

It is therefore Applicants' position that the rejection improperly inferred that in view of Figs. 1 and 2 of the '397 patent, Shizuno et al. disclose a macroscopically three-dimensional cleaning sheet.

It is also Applicants' position that the rejection improperly inferred that in view of Figs. 1 and 2 of the '397 patent, Shizuno et al. disclose a macroscopically three-dimensional cleaning sheet having the claimed Average Peak to Peak Distances and/or Surface Topography Indexes and/or Average Height Differentials.

Moreover, the office action stated that "it is reasonable to presume that these properties" (i.e. Average Peak to Peak Distances and/or Surface Topography Indexes and/or

Average Height Differentials) "are inherent to Shizuno's article. Support of said presumption is found in the use of like materials, i.e. hydroentangled cleaning sheets made of polyester or polyolefin fibers."

Applicants respectfully disagree with the above argument.

Applicants remind the Examiner that "[I]nherency may not be established by probabilities or possibilities. **The mere fact that a certain thing may result from a given set of circumstances is not sufficient.**" (Emphasis supplied) *In re Oelrich and Divigard*, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981). In addition, "the Examiner **must provide some evidence or scientific reasoning to establish reasonableness of the Examiner's belief** that the functional limitation is an inherent characteristic of the prior art before the applicant can be put through this burdensome task." (Emphasis supplied) *Ex parte Skinner*, 2 U.S.P.Q. 2d 1788 (B.P.A.I. 1986)

It is also well accepted that "[t]o serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with **recourse to extrinsic evidence.** Such evidence must make clear that **the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.**" (Emphasis supplied) *EMI Group North America Inc. v. Cypress Semiconductor Corp.*, 268 F.3d 1342 (Fed. Cir. 2001)

It is Applicants' position that the office action has provided no evidence whatsoever showing that the characteristics of the claimed macroscopically three-dimensional cleaning sheet can be found in the Shizuno reference.

As a result, it is also Applicants' position that the office action has failed to establish a *prima facie* case of obviousness when it relied on the Shizuno reference.

For the sake of brevity, Applicants submit that the same arguments presented regarding the Shizuno reference also apply to the 35 U.S.C. 103(a) rejections of the claims as obvious over Shizuno et al. in view of Henry '061, Trasher '436, Gilmore et al. '858, Mackey '112 and/or Zelazoski '555.

Reconsideration and withdrawal of the rejections are therefore respectfully requested.

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It is submitted that all the claims are in condition for allowance. Early and favorable action on all claims is therefore requested.

If the next action is other than to allow the claims, the favor of a telephonic interview is requested with the undersigned representative.

Respectfully submitted,
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